

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RUDI LOVATI AND ALESSANDRA LOVATI,

Plaintiffs,

v.

PETRÓLEOS DE VENEZUELA, S.A.

Defendant.

CIVIL INDEX NO. 1:19-cv-04799-ALC

SUPPLEMENTAL COMPLAINT

Plaintiffs Rudi Lovati, and Alessandra Lovati (collectively, “Plaintiffs”), by their undersigned counsel, as and for their Supplemental Complaint against Defendant Petróleos de Venezuela, S.A. (“PDVSA”), allege as follows:

NATURE OF THE ACTION

1. This is a breach of contract action arising from the failure of PDVSA to make contractually-mandated interest payments on certain notes (the “Notes”) held by Plaintiffs and issued by PDVSA pursuant to an Indenture, dated as of November 17, 2011, as amended (the “Indenture”), entered into by and among PDVSA, PDVSA Petróleo S.A., as guarantor, Wilmington Trust Company, as trustee (the “Trustee”), Citibank, N.A., as registrar, transfer agent and principal paying agent, and Dexia Banque Internationale à Luxembourg, Societe Anononyme, as Luxembourg listing agent and paying agent. Since commencement of this action, the Notes have matured and PDVSA has failed to pay the Notes’ principal as it became due. For their relief, Plaintiffs seek payment of the accrued and unpaid principal and interest on the Notes held by the Plaintiffs, as provided for in the Indenture, under the Notes and under New York law. A true and accurate copy of the Indenture, with the forms of the Notes attached as exhibits thereto, is attached as **Exhibit A**.

THE PARTIES

2. Plaintiff Rudi Lovati is a natural person residing in the Italian Republic (“Italy”).
3. Plaintiff Alessandra Lovati a natural person residing in Italy.
4. Defendant PDVSA is a capital stock corporation organized under the laws of the Bolivarian Republic of Venezuela (the “Republic”), majority owned by the Republic, which is a Foreign State as defined in 28 U.S.C. § 1603, and PDVSA is therefore an Agency or Instrumentality of a Foreign State, as defined in 28 U.S.C. § 1603.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1330(a), as PDVSA is a foreign capital stock corporations owned directly by the Republic, which is a Foreign State. PDVSA has explicitly and unconditionally waived sovereign immunity under Section 10.10(c) of the Indenture with respect to actions arising out of or based on the Notes issued pursuant to the Indenture, or arising out of or based on the Indenture itself, by holders of the Notes issued thereunder, and is, therefore, not entitled to immunity under 28 U.S.C. §§ 1605-07 or under any applicable international agreement.

6. In addition, this Court has personal jurisdiction over PDVSA because PDVSA regularly conducts business in New York and PDVSA consented in the Indenture to submit to the jurisdiction of this Court, in respect to actions by holders of Notes issued under the Indenture, arising out of or based on such Notes, or arising out of or based on the Indenture itself.

7. Plaintiffs have standing to bring this action. On February 1, 2021, Cede & Company, as nominee of the Depository Trust Company authorized Plaintiffs, as Beneficial Owners of the Notes due 2021, CUSIP No. P7807HAP0, “to take any and all actions and exercise any and all rights and remedies that Cede & Co. as the holder of record of such Notes is

entitled to take, other than any action or any exercise of any right or remedy as against The Depository Trust Company or its affiliates or its nominee Cede & Co., under the terms of the Notes, the related guarantees, the related indenture, and any other controlling documents.” A true and accurate copy of the authorization letter is attached as **Exhibit B**. This was the second such authorization letter Plaintiffs received, the first of which was dated June 2, 2020.

8. Venue is proper in this district by agreement of the parties and pursuant to 28 U.S.C. § 1391(f).

9. PDVSA has appointed Corporation Service Company as its agent to receive and forward any writs, process and summonses in any suit, action or proceeding brought in connection with the Indenture or the Notes against PDVSA in any United States federal court sitting in the Borough of Manhattan, New York City.

FACTUAL ALLEGATIONS

The Non-Payment on Rudi Lovati’s Notes by PDVSA

10. The following relates to Rudi Lovati’s Notes:

a. On May 23, 2019, when the original Complaint in this lawsuit was filed, Rudi Lovati was the Beneficial Owner of \$17,965,000.00 principal amount of Notes, Alessandra Sarago Lovati was the Beneficial Owner of \$19,470,000.00 principal amount of Notes, and Sergio Lovati was the Beneficial Owner of \$17,965,000.00 principal amount of Notes, issued pursuant to the Indenture by PDVSA. On or about December 8, 2019, Alessandra Sarago Lovati transferred said \$19,470,000.00 principal amount of Notes to Rudi Lovati, and, on or about September 30, 2020, Sergio Lovati transferred said \$17,965,000.00 principal amount of Notes to Rudi Lovati, making Rudi Lovati presently the Beneficial Owner of \$55,400,000.00 principal amount of Notes (the “Rudi Lovati Notes”). The ISIN for the Rudi Lovati Notes is USP7807HAP03.

b. The Rudi Lovati Notes have a coupon rate of 9% per annum and mature in equal installments on November 17, 2019, November 17, 2020 and November 17, 2021, the final maturity. PDVSA failed to make any of the installment principal payments due on the Rudi Lovati Notes, which have now matured. As such, PDVSA currently owes \$55,400,000.00 in outstanding principal on the Rudi Lovati Notes.

c. Interest under the Rudi Lovati Notes is payable semi-annually in arrears on each May 17 and November 17 until the principal thereof is paid or fully provided for. Interest on the Rudi Lovati Notes in the amount of \$2,493,000.00 was due on November 17, 2017, and has not been paid by PDVSA. Interest on the Rudi Lovati Notes in the amount of \$2,493,000.00 was due on May 17, 2018, and has not been paid by PDVSA. Interest on the Rudi Lovati Notes in the amount of \$2,493,000.00 was due on November 17, 2018, and has not been paid by PDVSA. Interest on the Rudi Lovati Notes in the amount of \$2,493,000.00 was due on May 17, 2019, and has not been paid to Rudi Lovati by PDVSA. Interest on the Rudi Lovati Notes in the amount of \$2,493,000.00 was due on November 17, 2019, and has not been paid by PDVSA. Interest on the Rudi Lovati Notes in the amount of \$2,493,000.00 was due on May 17, 2020, and has not been paid by PDVSA. Interest on the Rudi Lovati Notes in the amount of \$2,493,000.00 was due on November 17, 2020, and has not been paid by PDVSA. Interest on the Rudi Lovati Notes in the amount of \$2,493,000.00 was due on May 17, 2021, and has not been paid by PDVSA. Interest on the Rudi Lovati Notes in the amount of \$2,493,000.00 was due on November 17, 2021, and has not been paid by PDVSA. The current total amount of coupon interest owed on the Rudi Lovati Notes, which has not been paid or fully provided for by PDVSA, is \$22,437,000.00.

d. On February 8, 2019, Sergio Lovati, Rudi Lovati and Alessandra Sarago Lovati delivered to PDVSA and the Trustee demands for the payment of the overdue and unpaid interest on the Rudi Lovati Notes with respect to interest payments due on November 17, 2017, May 17, 2018 and November 17, 2018. True and accurate copies of said demands are set forth as **Exhibit C, Exhibit D, and Exhibit E.**

The Non-Payment on Alessandra Lovati's Notes by PDVSA

11. The following relates to Alessandra Lovati's Notes:

a. As of May 23, 2019 and continuing to the present date, Alessandra Lovati is and was the Beneficial Owner of \$55,000.00 principal amount of Notes (the "Alessandra Lovati Notes"), issued pursuant to the Indenture by PDVSA. The ISIN for the Alessandra Lovati Notes is USP7807HAP03.

b. The Alessandra Lovati Notes have a coupon rate of 9% per annum and mature in equal installments on November 17, 2019, November 17, 2020 and November 17, 2021, the final maturity. PDVSA has failed to make any of the installment principal payments due on the Alessandra Lovati Notes, which have now matured. As such, PDVSA currently owes \$55,000.00 in outstanding principal on the Alessandra Lovati Notes.

c. Interest under the Alessandra Lovati Notes is payable semi-annually in arrears on each May 17 and November 17 until the principal thereof is paid or fully provided for. Interest on the Alessandra Lovati Notes in the amount of \$2,475.00 was due on November 17, 2017, and has not been paid by PDVSA. Interest on the Alessandra Lovati Notes in the amount of \$2,475.00 was due on May 17, 2018, and has not been paid by PDVSA. Interest on the Alessandra Lovati Notes in the amount of \$2,475.00 was due on November 17, 2018, and has not been paid by PDVSA. Interest on the Alessandra Lovati Notes in the amount of \$2,475.00 was due on May 17, 2019, and has not been paid by PDVSA. Interest on the Alessandra Lovati Notes

in the amount of \$2,475.00 was due on November 17, 2019, and has not been paid by PDVSA. Interest on the Alessandra Lovati Notes in the amount of \$2,475.00 was due on May 17, 2020, and has not been paid by PDVSA. Interest on the Alessandra Lovati Notes in the amount of \$2,475.00 was due on November 17, 2020, and has not been paid by PDVSA. Interest on the Alessandra Lovati Notes in the amount of \$2,475.00 was due on May 17, 2021, and has not been paid by PDVSA. Interest on the Alessandra Lovati Notes in the amount of \$2,475.00 was due on November 17, 2021, and has not been paid by PDVSA. The total amount of coupon interest owed on the Alessandra Lovati Notes, which has not been paid or fully provided for by PDVSA, is \$22,275.00.

d. On February 8, 2019, Alessandra Lovati delivered to PDVSA and the Trustee a demand for the payment of the overdue and unpaid interest on the Alessandra Lovati Notes with respect to the interest payments due on November 17, 2017, May 17, 2018 and November 17, 2018. A true and accurate copy of said demand is set forth as **Exhibit F**.

FIRST CLAIM FOR RELIEF

(For Breach of Contract on the Rudi Lovati Notes)

12. Rudi Lovati repeats and realleges the allegations set forth in paragraphs 1 through 11 herein.

13. The Rudi Lovati Notes are Notes outstanding under the terms of the Indenture. As of no later than February 1, 2021, Rudi Lovati, as Beneficial Owner of the Rudi Lovati Notes, was duly authorized to “to take any and all actions and exercise any and all rights and remedies” with respect to the Rudi Lovati Notes.

14. On or about February 8, 2019, Sergio Lovati, Rudi Lovati and Alessandra Sarago Lovati delivered demands to PDVSA and the Trustee for the payment of overdue and unpaid interest on the Rudi Lovati Notes in the amount of \$7,479,000.00.

15. Despite these notices, PDVSA has failed to make any payments of principal and interest on the Rudi Lovati Notes.

16. Since the delivery of the notices to PDVSA and the Trustee, the Rudi Lovati Notes have matured, yet PDVSA has failed to make any of the installment payments of principal due on the Rudi Lovati Notes on November 17, 2019, November 17, 2020 and November 17, 2021 in the amount of \$55,400,000.00.

17. Since the delivery of the notices to PDVSA and the Trustee, PDVSA has failed to make the additional payments of interest due on the Rudi Lovati Notes, including the payment of \$2,493,000.00 due on May 17, 2019, the payment of \$2,493,000.00 due on November 17, 2019, the payment of \$2,493,000.00 due on May 17, 2020, the payment of \$2,493,000.00 due on November 17, 2020, the payment of \$2,493,000.00 due on May 17, 2021, and the payment of \$2,493,000 due on November 17, 2021.

18. By reason of the foregoing, PDVSA has breached its contractual obligations to Rudi Lovati, and PDVSA is liable to Rudi Lovati for the amount of unpaid principal in the amount of \$55,400,000.00 and unpaid interest in the amount of \$22,437,000.00, plus additional amounts of interest on the Rudi Lovati Notes that shall in the future become due and remain unpaid by PDVSA, plus pre-judgment interest thereon.

SECOND CLAIM FOR RELIEF

(For Breach of Contract on the Alessandra Lovati Notes)

19. Alessandra Lovati repeats and realleges the allegations set forth in paragraphs 1 through 11 herein.

20. The Alessandra Lovati Notes are Notes outstanding under the terms of the Indenture. As of no later than February 1, 2021, Alessandra Lovati, as Beneficial Owner of the

Alessandra Lovati Notes, was duly authorized to “to take any and all actions and exercise any and all rights and remedies” with respect to the Alessandra Lovati Notes.

21. On or about February 8, 2019, Alessandra Lovati delivered a demand to PDVSA and the Trustee for the payment to Alessandra Lovati of the overdue and unpaid interest on the Alessandra Lovati Notes in the amount of \$7,425.00.

22. Despite these notices, PDVSA has failed to make any payments of principal and interest on the Alessandra Lovati Notes.

23. Since the delivery of the notices to PDVSA and the Trustee, the Alessandra Lovati Notes have matured, yet PDVSA has failed to make any of the installment payments of principal due on the Alessandra Lovati Notes on November 17, 2019, November 17, 2020 and November 17, 2021 in the amount of \$55,000.00.

24. Since the delivery of the notices to PDVSA and the Trustee, PDVSA has failed to make the additional payments of interest due on the Alessandra Lovati Notes, including the payment of \$2,475.00 due on May 17, 2019, the payment of \$2,475.00 due on November 17, 2019, the payment of \$2,475.00 due on May 17, 2020, the payment of \$2,475.00 due on November 17, 2020, the payment of \$2,475.00 due on May 17, 2021, and the payment of \$2,475.00 due on November 17, 2021.

25. By reason of the foregoing, PDVSA has breached its contractual obligations to Alessandra Lovati, and PDVSA is liable to Alessandra Lovati for the amount of unpaid principal in the amount of \$55,000.00 and unpaid interest in the amount of \$22,275.00, plus additional amounts of interest on the Alessandra Lovati Notes that shall in the future become due and remain unpaid by PDVSA, plus pre-judgment interest thereon.

WHEREFORE, Plaintiffs Rudi Lovati and Alessandra Lovati demand judgment against PDVSA, as follows:

- i. On Count One, awarding Rudi Lovati damages against PDVSA in the amount of at least \$77,837,000.00, plus interest;
- ii. On Count Two, awarding Alessandra Lovati damages against PDVSA in the amount of at least \$77,275.00, plus interest; and
- iii. Awarding Plaintiffs their costs, attorneys' fees and such other and further relief as this Court shall deem just and proper.

Dated: New York, New York
January 3, 2022

DUANE MORRIS LLP

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